

THOMAS R. BURKE (State Bar No. 141930)
 E-mail: thomasburke@dwt.com
 DAVIS WRIGHT TREMAINE LLP
 505 Montgomery Street, Suite 800
 San Francisco, California 94111
 Telephone: (415) 276-6500
 Facsimile: (415) 276-6599

JANET L. GRUMER (State Bar No. 232723)
 E-mail: janetgrumer@dwt.com
 DAVIS WRIGHT TREMAINE LLP
 865 South Figueroa Street, Suite 2400
 Los Angeles, California 90017-2566
 Telephone: (213) 633-6800
 Facsimile: (213) 633-6899

Attorneys for Defendant CABLE NEWS
 NETWORK, INC. (erroneously sued as
 Time Warner, Inc.)

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA-OAKLAND DIVISION

GREATER LOS ANGELES AGENCY ON
 DEAFNESS, INC., DANIEL JACOB,
 EDWARD KELLY and JENNIFER OLSON,
 on behalf of themselves and all others similarly
 situated,

Plaintiffs,

vs.

TIME WARNER INC., a Delaware
 Corporation,

Defendant.

Case No. 4:11-cv-03458-LB

**ANSWER OF DEFENDANT TIME
 WARNER INC. TO PLAINTIFFS' CLASS
 ACTION COMPLAINT FOR
 VIOLATIONS OF THE UNRUH CIVIL
 RIGHTS ACT, CAL. CIV. CODE § 51, *ET*
SEQ., AND THE CALIFORNIA
 DISABLED PERSONS ACT, CAL. CIV.
 CODE § 54, *ET SEQ.***

Assigned to the Hon. Laurel Beeler
 Courtroom 4

Action Filed: June 15, 2011

Action Removed: July 14, 2011

Defendant Cable News Network, Inc., real party in interest (erroneously sued as Time Warner, Inc.), (“Defendant”) answering for itself and no others, in response to the Complaint filed by Greater Los Angeles Agency on Deafness, Inc., Daniel Jacob, Edward Kelly, and Jennifer Olsen (“Plaintiffs”) admits, denies, and avers as follows:

INTRODUCTION

1. Answering paragraph 1, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

2. Answering paragraph 2, Defendant admits that Time Warner Inc. is a large media and entertainment company and that Turner Broadcasting System, Inc. (“TBS, Inc.”) is a subsidiary of Time Warner Inc. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every of the remaining allegations in this paragraph.

3. Answering paragraph 3, Defendant admits that TBS, Inc. is involved in television production, distribution and television news programming. Defendant admits that TBS, Inc. owns Cable News Network, Inc., and produces television news and entertainment programming including but not limited to, CNN and HLN. Defendant admits that it operates the CNN.com website. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every of the remaining allegations in this paragraph.

4. Answering paragraph 4, Defendant admits that in January 2011, the CNN.com website had “33 million unique visitors and 864 million monthly page views to the home page alone.” Except as expressly admitted herein, Defendant denies, generally and specifically, each and every of the remaining allegations in this paragraph.

5. Answering paragraph 5, Defendant admits that more people access CNN.com when there is breaking news than at other times. Defendant admits that CNN.com states that on March 12, 2011, CNN.com received 67 million global page views of its coverage of the earthquake and tsunami in Japan. Defendant admits that CNN.com’s website states that on March 11, 2011, it served 60 million global video starts. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every of the remaining allegations in this paragraph.

1 6. Answering paragraph 6, Defendant admits that its CNN.com website is accessible
2 from California. Except as expressly admitted herein, Defendant denies, generally and
3 specifically, each and every of the remaining allegations in this paragraph.

4 7. Answering paragraph 7, Defendant admits that it makes available on its website a
5 substantial number of videos that provide news and information. Defendant admits that some of
6 the videos on CNN.com have previously appeared on cable television with captioning technology
7 not available on the World Wide Web. Defendant admits that some of the videos that are
8 available on CNN.com are shown only online. Defendant admits that it does not presently have
9 captioning on its CNN.com website. Except as expressly admitted herein, Defendant denies,
10 generally and specifically, each and every of the remaining allegations in this paragraph.

11 8. Answering paragraph 8, Defendant denies, generally and specifically, each and
12 every of the remaining allegations in this paragraph.

13 9. Answering paragraph 9, Defendant admits that closed captioning on television
14 means that users may see the captions by activating a key on their control system that turns on the
15 captions. Except as expressly admitted herein, Defendant denies, generally and specifically, each
16 and every of the remaining allegations in this paragraph.

17 10. Answering paragraph 10, Defendant admits that many of the videos on CNN.com
18 are accompanied by text. Defendant avers that the remaining allegations in this paragraph are
19 argument and conclusions of law that require no answer and, to the extent that it contains
20 allegations of fact, they are denied.

21 11. Answering paragraph 11, Defendant admits that on April 14, 2011, CNN.com
22 posted a video entitled "Concrete pumps head to nuclear plant." Defendant avers that the
23 remaining allegations in this paragraph are argument and conclusions of law that require no
24 answer and, to the extent that it contains allegations of fact, they are denied.

25 12. Answering paragraph 12, Defendant avers that the allegations in this paragraph are
26 argument and conclusions of law that require no answer and, to the extent that it contains
27 allegations of fact, they are denied.
28

13. Answering paragraph 13, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every allegation in this paragraph.

14. Answering paragraph 14, Defendant admits that it captions video content of its television programs in compliance with applicable federal regulations. Except as expressly admitted, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

15. Answering paragraph 15, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

16. Answering paragraph 16, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

JURISDICTION

17. Answering paragraph 17, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

VENUE

18. Answering paragraph 18, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

19. Answering paragraph 19, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every allegation in this paragraph.

PARTIES

20. Answering paragraph 20, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every allegation in this paragraph.

21. Answering paragraph 21, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every allegation in this paragraph.

22. Answering paragraph 22, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every allegation in this paragraph.

23. Answering paragraph 23, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every allegation in this paragraph.

24. Answering paragraph 24, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

25. Answering paragraph 25, Defendant admits that Time Warner Inc. is a publicly traded company whose stock is traded on the New York Stock Exchange under the symbol TWX. Defendant admits that Time Warner Inc. is duly incorporated under the laws of the State of Delaware and that its principal place of business is in the State of New York. Defendant is duly incorporated in the State of Delaware and that its principal place of business is in the State of Georgia. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every of the remaining allegations in this paragraph.

26. Answering paragraph 26, Defendant admits that it owns CNN.com. Except as expressly admitted, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every allegation in this paragraph.

FACTS

27. Answering paragraph 27, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every of the remaining allegations in this paragraph.

28. Answering paragraph 28, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every of the remaining allegations in this paragraph.

29. Answering paragraph 29, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every of the remaining allegations in this paragraph.

30. Answering paragraph 30, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every of the remaining allegations in this paragraph.

31. Answering paragraph 31, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

32. Answering paragraph 32, Defendant admits that prior to filing this action, the Greater Los Angeles Agency on Deafness, Inc. contacted Time Warner Inc. and requested that it provide captioning for videos posted on CNN.com. Except as expressly admitted, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

EXPERIENCES OF NAMED PLAINTIFFS

33. Answering paragraph 33, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every of the remaining allegations in this paragraph.

34. Answering paragraph 34, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every of the remaining allegations in this paragraph.

35. Answering paragraph 35, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies, generally and specifically, each and every of the remaining allegations in this paragraph.

CLASS ALLEGATIONS

36. Answering paragraph 36, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

37. Answering paragraph 37, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

38. Answering paragraph 38, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

39. Answering paragraph 39, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

40. Answering paragraph 40, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

41. Answering paragraph 41, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

42. Answering paragraph 42, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

FIRST CAUSE OF ACTION

(Violation of California Civil Code §§ 51, *et seq.* – The Unruh Act)

43. Answering paragraph 43, Defendant reincorporates its responses to the allegations contained in paragraphs 1 through 42 as if fully stated herein.

1 44. Answering paragraph 44, Defendant avers that the allegations in this paragraph are
2 argument and conclusions of law that require no answer and, to the extent that it contains
3 allegations of fact, they are denied.

4 45. Answering paragraph 45, Defendant avers that the allegations in this paragraph are
5 argument and conclusions of law that require no answer and, to the extent that it contains
6 allegations of fact, they are denied.

7 46. Answering paragraph 46, Defendant avers that the allegations in this paragraph are
8 argument and conclusions of law that require no answer and, to the extent that it contains
9 allegations of fact, they are denied.

10 47. Answering paragraph 47, Defendant admits that CNN.com is available on the
11 internet to persons within and outside of the State of California. Except as expressly admitted
12 herein, Defendant avers that the allegations in this paragraph are argument and conclusions of law
13 that require no answer and, to the extent that they contains allegations of fact, Defendant denies,
14 generally and specifically, each and every of the remaining allegations in this paragraph.

15 48. Answering paragraph 48, Defendant avers that the allegations in this paragraph are
16 argument and conclusions of law that require no answer and, to the extent that it contains
17 allegations of fact, they are denied.

18 49. Answering paragraph 49, Defendant avers that the allegations in this paragraph are
19 argument and conclusions of law that require no answer and, to the extent that it contains
20 allegations of fact, they are denied.

21 50. Answering paragraph 50, Defendant avers that the allegations in this paragraph are
22 argument and conclusions of law that require no answer and, to the extent that it contains
23 allegations of fact, they are denied.

24 51. Answering paragraph 51, Defendant avers that the allegations in this paragraph are
25 argument and conclusions of law that require no answer and, to the extent that it contains
26 allegations of fact, they are denied.

1 52. Answering paragraph 52, Defendant avers that the allegations in this paragraph are
2 argument and conclusions of law that require no answer and, to the extent that it contains
3 allegations of fact, they are denied.

4 53. Answering paragraph 53, Defendant avers that the allegations in this paragraph are
5 argument and conclusions of law that require no answer and, to the extent that it contains
6 allegations of fact, they are denied.

7 **SECOND CAUSE OF ACTION**

8 (Violation of California Civil Code §§ 54, *et seq.* – The California Disabled Persons Act)

9 54. Answering paragraph 54, Defendant reincorporates its responses to the allegations
10 contained in paragraphs 1 through 53 as if fully stated herein.

11 55. Answering paragraph 55, Defendant avers that the allegations in this paragraph are
12 argument and conclusions of law that require no answer and, to the extent that it contains
13 allegations of fact, they are denied.

14 56. Answering paragraph 56, Defendant avers that the allegations in this paragraph are
15 argument and conclusions of law that require no answer and, to the extent that it contains
16 allegations of fact, they are denied.

17 57. Answering paragraph 57, Defendant avers that the allegations in this paragraph are
18 argument and conclusions of law that require no answer and, to the extent that it contains
19 allegations of fact, they are denied.

20 58. Answering paragraph 58, Defendant avers that the allegations in this paragraph are
21 argument and conclusions of law that require no answer and, to the extent that it contains
22 allegations of fact, they are denied.

23 59. Answering paragraph 59, Defendant avers that the allegations in this paragraph are
24 argument and conclusions of law that require no answer and, to the extent that it contains
25 allegations of fact, they are denied.
26
27
28

60. Answering paragraph 60, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

THIRD CAUSE OF ACTION

(Declaratory Relief – Code Civ. Proc. § 1060)

61. Answering paragraph 61, Defendant reincorporates its responses to the allegations contained in paragraphs 1 through 60 as if fully stated herein.

62. Answering paragraph 62, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

63. Answering paragraph 63, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

RELIEF REQUESTED

64. Answering paragraph 64, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

65. Answering paragraph 65, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

66. Answering paragraph 66, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

67. Answering paragraph 67, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

68. Answering paragraph 68, Defendant avers that the allegations in this paragraph are argument and conclusions of law that require no answer and, to the extent that it contains allegations of fact, they are denied.

ADDITIONAL AND AFFIRMATIVE DEFENSES

By alleging the matters set forth in the additional and affirmative defenses below, Defendant does not allege or admit that they have the burden of proof and/or persuasion with respect to any of these matters. Defendant alleges as follows:

FIRST ADDITIONAL AND AFFIRMATIVE DEFENSE

(Failure to State a Claim – All Claims)

1. The Complaint, and each and every allegation contained therein, fails to state facts sufficient to constitute a claim against Defendant. Among other things, Defendant makes its video content on CNN.com available to all persons on the same basis and has thus not treated Plaintiffs differently from persons who do not have hearing disabilities. Defendant is not a “business establishment” under California Civil Code section 51, is not a “public place” under California Civil Code Section 54 and the alleged claims do not set forth a violation of the Americans with Disabilities Act. Thus, as to videos posted on CNN.com, Defendant is not subject to compliance with either of the California statutes under which Plaintiffs bring their claims. Plaintiffs’ Complaint targets Defendant’s newsgathering and publishing activities on the World Wide Web, which are constitutionally protected by the First Amendment to the United States Constitution and Article I, Section 1 of California’s State Constitution. Thus, Plaintiff has not stated a claim against Defendant.

SECOND ADDITIONAL AND AFFIRMATIVE DEFENSE

(Compliance – All Claims)

2. Plaintiffs are barred from recovering under the Complaint, in whole or in part, because Defendant has substantially complied with any and all applicable statutes, regulations, and/or laws. The Federal Communications Commission and the United States Department of Justice are currently promulgating regulations concerning accessibility of material on the World

1 Wide Web and Defendant intends to be fully compliant with such regulations when such
2 regulations become effective.

3 **THIRD ADDITIONAL AND AFFIRMATIVE DEFENSE**

4 **(Defendant's Conduct Not Actionable – All Claims)**

5 3. Plaintiffs are barred from recovering under the Complaint, in whole or in part,
6 because at all relevant times Defendant acted in good faith and with good cause.
7 Among other things, Defendant did not directly or indirectly perform or fail to perform any act
8 that would constitute a violation of the rights, if any, of Plaintiffs or a violation of any duties or
9 obligations owed to Plaintiffs. Defendant makes its video content on CNN.com available to all
10 persons on the same basis and has thus not treated Plaintiffs differently from persons who do not
11 have hearing disabilities. Defendant is not a “business establishment” under California Civil
12 Code section 51, is not a “public place” under California Civil Code Section 54 and the alleged
13 claims do not set forth a violation of the Americans with Disabilities Act. Thus, as to its videos
14 posted on CNN.com, Defendant is not subject to compliance with either of the California statutes
15 under which Plaintiffs bring their claims. Plaintiffs’ Complaint targets Defendant’s
16 newsgathering and publishing activities on the World Wide Web, which are constitutionally
17 protected by the First and Fourteenth Amendments to the United States Constitution and Article I,
18 Section 1 of California’s State Constitution. The Federal Communications Commission and the
19 United States Department of Justice are currently promulgating regulations concerning
20 accessibility of material on the World Wide Web and Defendant intends to be fully compliant
21 with such regulations when such regulations become effective. Thus, Defendant’s conduct is not
22 actionable at this time.

23 **FOURTH ADDITIONAL AND AFFIRMATIVE DEFENSE**

24 **(Legitimate Business Reasons – All Claims)**

25 4. Plaintiffs are barred from recovering under the Complaint, in whole or in part,
26 because Defendant had legitimate, nondiscriminatory reasons for all actions taken with respect to
27 Plaintiffs, if any. Among other things, Defendant makes its video content on CNN.com available
28 to all persons on the same basis and has thus not treated Plaintiffs differently from persons who do

not have hearing disabilities. Plaintiffs' Complaint targets Defendant's newsgathering and publishing activities on the World Wide Web, which are constitutionally protected by the First Amendment to the United States Constitution and Article I, Section 1 of California's State Constitution. The Federal Communications Commission and the United States Department of Justice are currently promulgating regulations concerning accessibility of material on the World Wide Web and Defendant intends to be fully compliant with such regulations when such regulations become effective. Because Defendant's conduct was legitimate and non-discriminatory, Plaintiffs cannot recover against Defendant.

FIFTH ADDITIONAL AND AFFIRMATIVE DEFENSE

(Reasonable Care – All Claims)

5. Plaintiffs are barred from recovering under the Complaint, in whole or in part, because Defendant exercised reasonable care to prevent and correct promptly any alleged unlawful or discriminatory behavior. Among other things, Defendant did not directly or indirectly perform or fail to perform any act that would constitute a violation of the rights, if any, of Plaintiffs or a violation of any duties or obligations owed to Plaintiffs. Defendant makes available its video content on CNN.com to all persons on the same basis and has thus not treated Plaintiffs differently from persons who do not have hearing disabilities. The Federal Communications Commission and the United States Department of Justice are currently promulgating regulations concerning accessibility of material on the World Wide Web and Defendant intends to be fully compliant with such regulations when such regulations become effective. Thus, because Defendant acted at all times with reasonable care, Plaintiffs cannot recover under the Complaint.

SIXTH ADDITIONAL AND AFFIRMATIVE DEFENSE

(Impossibility – All Claims)

6. Plaintiffs are barred from recovering under the Complaint, in whole or in part, because the requested relief is impossible. The requested accommodations are not yet readily achievable. Among other things, the technology to provide video captioning to all persons on the World Wide Web is not yet available for some delivery devices and not available at a commercially reasonable price for other delivery devices and for videos produced by others.

1 Additionally, the Federal Communications Commission and the United States Department of
 2 Justice are currently promulgating regulations concerning accessibility of material on the World
 3 Wide Web and Defendant intends to be fully compliant with such regulations when such
 4 regulations become effective. Thus, Plaintiffs cannot recover under the Complaint.

5 **SEVENTH ADDITIONAL AND AFFIRMATIVE DEFENSE**

6 **(Relief Requested Not Necessary or Reasonable – All Claims)**

7 7. Plaintiffs are barred from recovering under the Complaint, in whole or in part,
 8 because the alleged accommodations requested are not necessary and/or reasonable. Thus,
 9 Plaintiffs cannot recover under the Complaint.

10 **EIGHTH ADDITIONAL AND AFFIRMATIVE DEFENSE**

11 **(Fundamental Alteration of Services and/or Activities – All Claims)**

12 8. Plaintiffs are barred from recovering under the Complaint, in whole or in part,
 13 because the accommodations requested would require Defendant to fundamentally alter nature of
 14 its services and/or activities, and would amount to compelled speech, which is prohibited by the
 15 First Amendment of the United States Constitution. Thus, Plaintiffs cannot recover under the
 16 Complaint.

17 **NINTH ADDITIONAL AND AFFIRMATIVE DEFENSE**

18 **(Denial of Services Based on Disability – All Claims)**

19 9. Plaintiffs are barred from recovering under the Complaint because Plaintiffs were
 20 not denied any opportunity to enjoy Defendant's accommodations or services as a result of any
 21 alleged disability as defined under California Civil Code §§ 51 *et seq.* and 54 *et seq.* and any
 22 regulations related thereto. Defendant has made available its video content posted on CNN.com
 23 on the same basis to all persons, regardless of whether or not they have hearing disabilities. Thus,
 24 Defendant has no denied Plaintiffs any accommodations or services and Plaintiffs may not
 25 therefore recover under the complaint.
 26
 27
 28

TENTH ADDITIONAL AND AFFIRMATIVE DEFENSE

(Lack of Disparate Treatment – All Claims)

10. Plaintiffs are barred from recovering under the Complaint because Defendant did not treat disabled persons differently from non-disabled persons. Defendant has made available its video content posted on CNN.com on the same basis to all persons, regardless of whether or not they have hearing disabilities. Thus, Plaintiffs cannot recover under the Complaint.

ELEVENTH ADDITIONAL AND AFFIRMATIVE DEFENSE

(Lack of Disparate Treatment – All Claims)

11. Plaintiffs are barred from recovering under the Complaint because Defendant did not act with the requisite degree of intent to treat disabled persons differently from non-disabled persons. Defendant has made available its video content posted on CNN.com on the same basis to all persons, regardless of whether or not they have hearing disabilities. Thus, Plaintiffs cannot recover under the Complaint.

TWELFTH ADDITIONAL AND AFFIRMATIVE DEFENSE

(Undue Burden or Hardship – All Claims)

12. Plaintiffs are barred from recovering under the Complaint, in whole or in part, because the relief requested would cause undue burden and/or undue hardship to Defendant. The Federal Communications Commission and the United States Department of Justice are currently regulations concerning accessibility of material on the World Wide Web and Defendant intends to be fully compliant with such regulations when such regulations become effective. It would be unduly burdensome and expensive to comply with Plaintiffs' demands at this point and within the next several months to then comply with the specific federal regulations which will likely take effect within the next 12 months.

THIRTEENTH ADDITIONAL AND AFFIRMATIVE DEFENSE

(Lack of Causation – All Claims)

13. Plaintiffs are barred from recovering under the Complaint, in whole or in part, because the alleged conduct of or chargeable to Defendant was not the cause of any injury, loss or damage to plaintiff. Any injury sustained by Plaintiffs was the result of intervening and/or

1 superseding causes or events, which were not properly attributable to or foreseeable by Defendant
2 and over which Defendant had no control.

3 **FOURTEENTH ADDITIONAL AND AFFIRMATIVE DEFENSE**

4 **(No Damages – All Claims)**

5 14. Plaintiffs are barred from recovering under the Complaint, in whole or in part,
6 because Plaintiffs have incurred no actual damages.

7 **FIFTEENTH ADDITIONAL AND AFFIRMATIVE DEFENSE**

8 **(Failure to Mitigate Damages – All Claims)**

9 15. Plaintiffs are barred from recovering under the Complaint, in whole or in part,
10 because Plaintiffs had a duty to exercise reasonable efforts to mitigate damages, if any, and the
11 loss suffered, if any, was the result of Plaintiffs' own failure and refusal to mitigate.

12 **SIXTEENTH ADDITIONAL AND AFFIRMATIVE DEFENSE**

13 **(No Injunctive Relief; Money Damages Sufficient – All Claims)**

14 16. Plaintiffs are barred from recovering under the Complaint, in whole or in part,
15 because the Plaintiffs are not entitled to the injunctive relief sought in the Complaint and because
16 Plaintiffs had adequate remedies at law for the claims and injuries alleged therein. Thus,
17 Plaintiffs cannot be awarded the injunctive relief sought under the Complaint.

18 **SEVENTEENTH ADDITIONAL AND AFFIRMATIVE DEFENSE**

19 **(No Injunctive Relief; Vagueness – All Claims)**

20 17. Plaintiffs are barred from recovering under the Complaint, in whole or in part,
21 because the Plaintiffs are not entitled to the injunctive relief sought in the Complaint because it is
22 impermissibly vague and non-specific to be enforced by the Court. As evidenced by the
23 regulations being promulgated by the Federal Communications Commission and the United States
24 Department of Justice, such regulations are necessarily voluminous to must take into account the
25 various newsgathering and publishing methods and processes, as well as available technology.
26 Thus, Plaintiffs cannot be awarded the injunctive relief sought under the Complaint.

EIGHTEENTH ADDITIONAL AND AFFIRMATIVE DEFENSE**(No Punitive Damages; Speculative – All Claims)**

18. Plaintiffs are barred from recovering under the Complaint, in whole or in part, because Plaintiff's damages, if any, are vague, uncertain and speculative. Plaintiffs have provided no factual basis for their claims that they are entitled to any actual, statutory, compensatory, or punitive damages. Defendant did not engage in any unlawful conduct in the course of its newsgathering and publishing activities on the World Wide Web through CNN.com. Thus, Plaintiffs cannot recover punitive damages under the Complaint.

NINETEENTH ADDITIONAL AND AFFIRMATIVE DEFENSE**(No Punitive Damages; Due Process – All Claims)**

19. Plaintiffs are barred from recovering under the Complaint, in whole or in part, to the extent that they seek punitive damages against Defendant. Such punitive damages violate Defendant's right to procedural and substantive due process under the Fifth and Fourteenth Amendment to the United States Constitution and California's State Constitution because of the vagueness and uncertainty of the criteria for the imposition of punitive damages and the lack of fair notice of what conduct will result in the imposition of such damages. Thus, Plaintiffs cannot recover punitive damages under the Complaint.

TWENTIETH ADDITIONAL AND AFFIRMATIVE DEFENSE**(No Punitive Damages; Not Warranted – All Claims)**

20. Plaintiffs are barred from recovering under the Complaint, in whole or in part, to the extent that they seek punitive damages against Defendant. Such punitive damages violate Defendant's right to procedural and substantive due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section I of California's State Constitution because the alleged wrongful conduct is not sufficiently reprehensible to warrant any punitive damage recovery. Thus, Plaintiffs cannot recover punitive damages under the Complaint.

TWENTY-FIRST ADDITIONAL AND AFFIRMATIVE DEFENSE**(No Punitive Damages; Proportionality – All Claims)**

21. Plaintiffs are barred from recovering under the Complaint, in whole or in part, to the extent that they seek punitive damages against Defendant. Such punitive damages violate Defendant's right to procedural and substantive due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section I of California's State Constitution because any punitive damage award would be grossly out of proportion to the alleged wrongful conduct at issue here. Thus, Plaintiffs cannot recover punitive damages under the Complaint.

TWENTY-SECOND ADDITIONAL AND AFFIRMATIVE DEFENSE**(First Amendment Prohibition on Prior Restraints on Speech – All Claims)**

22. Plaintiffs are barred from recovering under the Complaint, in whole or in part, because the requested prospective injunctive relief would amount to a prior restraint on Defendant's speech, which is prohibited under the First Amendment to the United States Constitution and under Article 1, Section 1 of California's State Constitution. Thus, Plaintiffs cannot obtain the requested relief under the Complaint.

TWENTY-THIRD ADDITIONAL AND AFFIRMATIVE DEFENSE**(First Amendment Prohibition on Prior Restraints on Speech – All Claims)**

23. Plaintiffs are barred from recovering under the Complaint, in whole or in part, because the requested injunctive relief would unduly burden Defendant's First Amendment rights more than other newsgathering and publishing businesses (which would not be required to comply with such injunctive relief). Imposing this burden on Defendant, and not others, is prohibited under the First Amendment to the United States Constitution and under Article 1, Section 1 of California's State Constitution. Thus, Plaintiffs cannot obtain the requested relief under the Complaint.

TWENTY-FOURTH ADDITIONAL AND AFFIRMATIVE DEFENSE**(First Amendment Restriction on Regulating Speech – All Claims)**

24. Plaintiffs are barred from recovering under the Complaint, in whole or in part, under the First and Fourteenth Amendments to the United States Constitution and Article I, Section 1 of California's State Constitution, because the Unruh Civil Rights Act and California Disabled Persons Acts, applied as sought in the Complaint to Defendant's newsgathering and publishing activities, but not other newsgathering and publishing businesses, would not sufficiently advance an important government interest and would burden substantially more speech more than necessary. Thus, Plaintiffs cannot obtain the requested relief under the Complaint.

TWENTY-FIFTH ADDITIONAL AND AFFIRMATIVE DEFENSE**(First Amendment Prohibition on Content-Based Determinations – All Claims)**

25. Plaintiffs are barred from recovering under the Complaint, in whole or in part, under the First and Fourteenth Amendments to the United States Constitution and Article I, Section 1 of California's State Constitution because their Complaint targets Defendant's newsgathering and publishing activities on the World Wide Web. Thus, Plaintiffs cannot obtain the requested relief under the Complaint.

TWENTY-SIXTH ADDITIONAL AND AFFIRMATIVE DEFENSE**(Commerce Clause – All Claims)**

26. Plaintiffs are barred from recovering under the Complaint, in whole or in part, under the federal Commerce Clause at Article I, Section 8, Clause 3 of the United States Constitution, because the Unruh Act and Disabled Persons Act, if applied as sought in the Complaint, would impose California accessibility standards on conduct occurring wholly outside of California, the practical effect being California's attempt to control Defendant's conduct beyond its boundaries. This would create the potential for inconsistent legislation among the States, as California and other states could establish their own conflicting accessibility standards. Because Defendant's activities are interstate in nature, and the application of California law would have the effect of regulating such conduct, Plaintiffs cannot obtain the requested relief.

TWENTY-SEVENTH ADDITIONAL AND AFFIRMATIVE DEFENSE

(Waiver – All Claims)

27. The Complaint, and each and every claim contained therein, is barred pursuant to the doctrine of waiver.

TWENTY-EIGHTH ADDITIONAL AND AFFIRMATIVE DEFENSE

(Unjust Enrichment – All Claims)

28. Plaintiffs are barred from recovering under the Complaint, in whole or in part, because they would be unjustly enriched if permitted to recover.

TWENTY-NINTH ADDITIONAL AND AFFIRMATIVE DEFENSE

(Lack of Standing – All Claims)

29. Plaintiff Greater Los Angeles Agency on Deafness, Inc. is barred from recovering under the Complaint, in whole or in part, because as an organization, it lacks standing to bring the claims made in the Complaint.

THIRTIETH ADDITIONAL AND AFFIRMATIVE DEFENSE

(No Entitlement to Attorneys' Fees – All Claims)

30. Plaintiffs are barred from recovering under the Complaint, in whole or in part, because the Complaint, and each and every claim contained therein, fails to state facts sufficient to entitle Plaintiffs to an award of attorneys' fees.

THIRTY-FIRST ADDITIONAL AND AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses – All Claims)

31. Defendant presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, additional or affirmative defenses available. Defendant reserves the right to assert additional and affirmative defenses in the event discovery indicates that they would be appropriate.

PRAYER

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiffs' Complaint be dismissed in its entirety, and that Plaintiffs take nothing against Defendant by reason of the Complaint;

1 2. That Defendant's costs and expenses of suit herein, including reasonable attorneys'
2 fees, be recovered; and

3 3. That Defendant be awarded such other relief as this Court deems just and proper.
4

5 DATED: August 19, 2011

DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE
JANET L. GRUMER

7
8 By: /s/Thomas R. Burke
 Thomas R. Burke

9 Attorneys for Defendant CABLE NEWS
10 NETWORK, INC. (erroneously sued as Time
11 Warner, Inc.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28